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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,731	03/23/2001	George Harry Hoffman	41556/04012 (RSI1P024)	8181
22428 7590 03/14/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER GORT, ELAINE L	
			ART UNIT 3687	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/815,731

Applicant(s)

HOFFMAN ET AL.

Examiner

Elaine Gort

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 1, 3-6, 8-11 and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

The claim(s) are replete with indefinite language, examples follow:

Claim 1 recites the limitation "the amount of the material sold" in line 12." There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the amount of sales" in line 19. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the given level of sales of the goods" in line 23. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the amount of the material sold" in line 15." There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the amount of sales of the goods sold" in line 22. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the given level of sales of the goods" in line 25. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the amount of the material sold" in line 16."

There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the amount of sales of the goods sold" in line 23.

There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the given level of sales of the goods" in line 27.

There is insufficient antecedent basis for this limitation in the claim.

Applicant must review and address all claims for occurrences of indefiniteness.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-6, 8-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hafner et al. (US Patent 5,893,076) in view of Brown et al. (US Patent 6,901,381), and Huang et al. (US Patent 5,953,707).

(Regarding claims 1, 6 and 11) Hafner et al. discloses the claimed device but is silent regarding: adjusting a supply of materials; calculating based on a recipe a predicted amount of materials for a given level of sales; and comparing an amount of goods sold to a predicted amount of materials for a given level of sales and determining a variance of the materials due to errors or loss.

Hafner et al. discloses, as best understood, the claimed **method, system and computer program product for providing a supplier or distributor interface** (supplier's access/interface the system via application 300 and server 50, e.g. figure 1) , **comprising:**

a) receiving data from a plurality of stores of a supply chain utilizing a network (Col. 4 lines 5-10 disclose sales data being sent to the database manager 35, Fig. 3. See also col. 6 lines 10-15 disclosing tracking of sales or lost goods 520);

b) aggregating the data in a database based on one or more supplier and/or distributor parameters (sales data is aggregated into the inventory activity data database 45 by the database manager, fig. 3 and col. 5 lines);

c) receiving a request relating to production of the goods (such as when a supplier demands the forecast engine 230 to predict future needs, col. 6 lines 20-25);

d) extracting in response to the request parameters and the amount of the material sold to at least one of the stores (forecast engine 230 extracts, in response to the prediction demand, information including "parameters" and inventory activity data that includes sales data, col. 6 lines 20-25);

e) calculating based on parameters a predicted amount of future needs (forecast engine 230 creates predictions of future needs based on "parameters" and inventory activity data that includes sales data, col. 6 lines 20-25); **and**

g) transmitting information for use by one of a supplier of the material to adjust a supply of the material (supplier is transmitted a suggested order quantity to adjust a supply of the material), **a distributor of the material to adjust the**

distribution of the material, the supply chain manager, or the store using the material to make the goods;

but is silent regarding:

where the data relating to an amount of goods relates to an amount of goods that are manually produced based on a recipe and sold by the stores;

where the parameter extracted from the database is a recipe relevant to the production of the goods and that uses at least one material in the production of the goods;

calculating the predicted amount by using the recipe to determine what should have been used;

calculating a variance between the amount of the material sold and the predicted amount; and

transmitting information relating to the variance to the supplier

Brown et al. teaches that it is old and well known in the art of retail to track data relating to an amount of goods sold where the goods are manually produced based on a recipe (for example see col. 11 Lines 15-40, where the system tracks hamburger buns, amount of soft drinks, napkins, french fries, etc.. taken into consideration as a part of a recipe for a hamburger meal);

where a recipe relevant to the production of the goods (hamburger meal, for example) and that uses at least one material in the production of the goods is extracted from a database (for example column 11 line 28 discloses a file that contains the recipe for items sold); and

where the recipe is used to calculate a predicted amount to determine what ingredients or materials should be used for the sale of the goods. The benefit of this teaching is to be able to track and forecast usage of ingredients or necessary components to products sold.

Therefore it would have been obvious to one of ordinary skill in the art of retail at the time the invention was made to modify the data being aggregated and analyzed in Hafner et al. to encompass sales and recipe data relating to goods that are manually produced based on a recipe and sold as taught by Brown et al., in order to track and forecast usage of ingredients or necessary components for products sold.

Huang et al. teaches, from paragraph (656) to (672) (or column lines 35+) that it is old and well known in the art of supply chain forecasting to compare a predicted amount of materials, or "forecasted sales", to actual goods sold to calculate and provide suppliers a "forecast variance" in order to "estimate the accuracy of the various types of forecasts" and to "identify those products and customers for which demand patterns are particularly unstable and thus require special attention" paragraph (659).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method/system of tracking sales of items along with raw material used in their sale of Hafner et al. and Brown et al., as modified above, to compare actual usage to predicted usage by calculating a variance as taught by Huang et al. in order to identify products and customers which demand patterns are particularly unstable.

(Regarding claims 3, 4, 8, 9, 11 and 14) Hafner et al. discloses in column 3 line 40 Internet access which includes a network-based interface.

(Regarding claims 5, 10 and 15) Brown et al. teaches that it is old and well known for a retailer to be a restaurant to sell food for people. Therefore it would have been obvious to modify the retailers of the combination of above to be a restaurant to sell food to people.

Response to Arguments

5. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. The Examiner has provided prior art teaching tracking and forecasting of ingredients used along with a recipe for restaurant items—Brown et al; and continues to use Huang et al. as a teaching for using variance calculations to identify and quantify actual deviations from forecasted predictions (which in the combination scenario would use the recipe to forecast how much of an ingredient should be used) to provide statistical benefit to suppliers so they can supply adequate ingredients.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Monday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571/272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/
Primary Examiner, Art Unit 3627

Elaine Gort
Primary Examiner
Art Unit 3627

2/29/2008